THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No. 23469 of 2005

Dated: 17.01. 2005

Between:

Sk.Mohd Jeelani.

..PETITIONER

AND

The Chief General Manager Telecom (BSNL)
Andhra Pradesh, Door Sanchar Bhavan,
Hyderabad – 500 001 and ors.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.23469 of 2005

ORDER:

The writ petition is filed seeking to call for the records pertaining to the engagement of freshers as casual labourers who are juniors to the petitioner duly converting them as full time casual labourers and declare the action of the respondents in not considering the case of the petitioner to re-engage as Casual Mazdoor/Labourer duly giving preference over the freshers as illegal and arbitrary, and consequently direct the respondents to consider the case of the petitioner and regularise his services as regular Mazdoor with all consequential benefits.

The petitioner states that he was engaged as casual labour in the respondents' organisation during the strike period from 07-03-1988 to 08-03-1988. Thereafter, he states that he worked in the Departmental Telegraph Office (DTD), Nellore for eight hours per day without any break and completed 240 days in 1990-91, 1998-99, and continued to work upto 2002. He further states that when he was not re-engaged, he submitted a representation on 29-01-2002 to the General Manager seeking re-engagement and his conversion as full time casual labourer, but to no avail. Against the inaction of the respondents in considering his case, he filed O.A. No.764 of 2003 before the Central Administrative Tribunal seeking his re-engagement and the Tribunal, directed the respondents to examine whether the petitioner is entitled for grant of temporary status as per the relevant rules. It is the grievance of the petitioner that the persons who are juniors to him were granted full time casual labourer status, but he was overlooked, and such action of the respondents, the petitioner contends is illegal and arbitrary.

Respondents filed counter affidavit denying the writ averments. In the counter, it stated that the petitioner is neither a casual labourer

nor a part-time casual labourer. It is further stated that the documentary evidence produced by the petitioner shows that the petitioner worked as telegraph-man (out door) only for a period of two days i.e. on 7-3-1988 and 8-3-1988 during the strike period. The engagement is confined for a period of 100 days in contingency works vide DOT letter No.269-4/93 STN-II (Pt) dtd.15/6/99, and therefore, the respondents are not engaging any casual labourers, and engagement of the petitioner in preference to the freshers does not arise. Petitioner is even not a part time casual labourer, nor he worked for more than 4 hours or less than 4 hours for 240 days in the preceding 12 months, which is the criteria for converting the part time casual labour into fulltime casual labourer. The petitioner did not produce any record indicating that he worked as part time casual labourer, and in the absence of any material, the claim of the petitioner for conversion from part-time casual labourer to fulltime casual labourer and consequently regularisation of his services, cannot be considered.

Learned counsel for the petitioner submitted that the action of the respondents in granting full time casual labourer status to persons who are juniors to the petitioner and overlooking the case of the petitioner for grant of full time casual labourer status and not re-engaging him as casual labourer is illegal and arbitrary.

Learned Standing Counsel for the respondents submitted that the petitioner is neither a casual labourer nor a permanent casual labour and he has not completed the number of man-days that are required for regularisation of his service. Counsel further submitted that in view of the judgment of the apex Court in "***Steel Authority of India Ltd. v. National Union Water Front Workers***[1]" the remedy of the petitioner is to approach the labour authorities under the Industrial Disputes Act, 1947, and no relief can be granted to him.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The writ petition raises disputed questions of fact, namely whether the petitioner is entitled to full time casual labourer status, whether ignoring his claim the respondents conferred full-time labourer status to his juniors, whether he worked during the strike period, and whether he had put in the required number of man days, which entitled him to seek regularization, and such disputed questions of fact, the law is well settled cannot be conveniently gone into by this Court under

Article 226 of the Constitution of India, for they require adducing of evidence by the parties. Be that as it may, in ***Steel Authority of India Ltd's case*** the apex Court observed that the determination of question as to whether the contract of employment of labour is a genuine one or a mere ruse/camouflage to evade the provisions of beneficial labour legislation, requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution, and the appropriate authority to go into those issues will be Industrial Tribunal/Court whose determination will be amenable to judicial review. Hence, this Court, in exercise of jurisdiction under Article 226 of the Constitution, cannot go into the disputed questions of fact and grant any relief to the petitioner, and the remedy of the petitioner, if any, is to approach the labour authorities under the Industrial Disputes Act, 1947.

Accordingly, the writ petition is disposed of granting liberty to the petitioner to approach the labour authorities under the Industrial Disputes Act, 1947 for the relief sought in the writ petition. No costs.

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N.V.RAMANA,J

DATE: 17.01.2007
Grk/TVK

THE HONOURABLE SRI JUSTICE N.V.RAMANA

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